

October 24, 2019

Paid Leave Laws



Overview of Paid Leave Laws in the Northeast

Paid leave required (state administered)

- Connecticut (family and medical)
- Massachusetts (family and medical)
- New York (family)

Paid leave required

- Maine (for any reason)

Temporary disability/caregiver benefits (state administered)

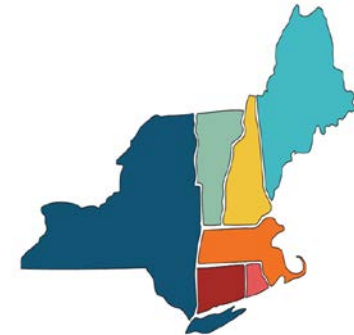
- Rhode Island (family and medical)

Paid leave bill under consideration

- Vermont (currently considering a bill that, if passed, would create a mandatory paid family leave program)

No state mandated paid leave

- New Hampshire (a bill for paid family and medical leave was recently vetoed by Gov. Sununu)



MAINE PAID LEAVE



Maine – Evolution of Paid Leave Law



Act to Support Healthy
Workplaces By Providing
Earned Paid Sick Leave

An Act Authorizing
Earned Employee Leave

Key Provisions – Maine Leave Law

- Goes into effect **1/1/21**
- Applies to employers with more than **10 employees** for more than 120 days in any calendar year.
- Employees must earn at least one hour of paid leave for every 40 hours worked, **up to a total of 40 hours per year**.
- Accrual must begin at time of hire, but employers may require **120-day tenure before use**.
- Paid at “same base rate of pay” as earned before the leave, and receive same benefits as provided for other paid leaves.

Notice and Scheduling

- Similar to FMLA – employees must provide reasonable notice of their intent to use leave unless prevented from doing so because of emergency nature of need for leave.
- Employers may require that leave be scheduled to prevent undue hardship on employer's operations.



Carry Over and Pay Out

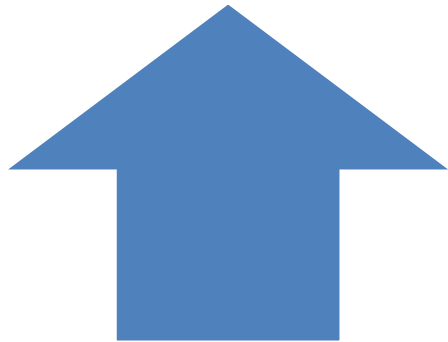
- Statute says nothing about required carry over or payment upon termination.
- Unless MDOL adopts contrary rules, expect employers may require leave be used in the year it is earned.
- Payment upon termination?
 - Wage payment statute says vacation has the same status as wages.
 - Court decisions provide that, because employers aren't required to offer paid vacation, employers control the terms of paid vacation, including whether it is payable upon termination.
 - Earlier versions of this bill expressly provided sick time was not payable upon termination, but the bill is now silent.

Enforcement / Penalties

- Paid leave law will be enforced by Department of Labor
- \$1,000 per violation

PENALTY

Maine Paid Leave – Bad News / Good News



The state statute preempts local paid leave regulations



Absent a federal paid leave law that preempts state regulation, multi-state employers must comply with different paid leave laws

Maine Paid Leave Law – Unanswered Questions

- “One year of employment” – calendar year, anniversary?
- How do employers calculate accrual for exempt employees whose hours may not be tracked?
- Can employees be disciplined for misusing paid leave or failing to follow notification policies?
- Require minimum use, like under FMLA?
- How does the law impact existing PTO policies?
 - For example, can employers who permit carry over still cap accrual?



MASSACHUSETTS PAID FAMILY AND MEDICAL LEAVE



PFML

Overview

- Effective January 1, 2021
 - Up to **20** weeks of medical leave for employee's serious health condition
 - Up to **12** weeks of family leave to bond with child or because of qualifying exigency
 - Up to **26** weeks of family leave to care for a family member who is a covered service member
- Effective July 1, 2021
 - Up to **12** weeks of family medical leave to care for a family member with a serious health condition

Overview (cont'd)

- Beginning January 1, 2021, covered individuals eligible “for up to **26 total weeks, in the aggregate**, of paid family and medical leave”
- Effective January 1, 2023
 - Retaliation prohibited
- **To fund the future paid leave, contributions must be made through MassTaxConnector beginning October 1, 2019**

Timeline

September 30

- Poster
- Notice to all employees
- New forms available online

Notice for Current Employees and New Hires

- All current employees on or before **September 30**
- To all new employees **within 30 days of their first day of employment**
- Must be written in the employee's primary language
- **Must obtain from each employee a written statement acknowledging receipt of the notice or a statement indicating the employee's refusal to acknowledge the notice**

Timeline

October 1

- Begin withholding PFML contributions
- New rates in effect

Total Workforce

- Count all MA W-2 employees
 - All W-2 employees **who perform services in the Commonwealth**
- Include 1099-MISC contractors only if they make up more than 50% of your total workforce (i.e., W-2 employees and 1099-MISC employees combined)

New Rates

- New rates:
 - The total contribution rate has been adjusted from 0.63% to **0.75%** of gross wages
 - **0.62% for medical leave**
 - Employers with 25 or more employees pay 60%
 - Employers with fewer than 25 employees not required to pay any portion
 - **0.13% for family leave**
 - Employers not required to pay any portion

Applicable Wages

- Withholdings are based on wages up to the social security max
 - Currently \$132,900 (adjusted annually)
- Definition of wages for PFML purposes has been aligned with MA Unemployment Statute definition of wages
 - Use wage base that you use for unemployment
 - Salaries, hourly pay, non-cash tips, and stipends
 - Commissions and bonuses
 - Overtime, vacation, or sick pay
 - 401K *employer* contributions
 - If you are excluded from making unemployment contributions, same exclusion applies to PFML
 - Examples: real estate brokers paid on commission
- Tax issue is awaiting guidance from IRS
 - For now, assume after-tax wages

Timeline

December 20

- Application for exemption for private plan

Exemption for Private Plan

- Exemption available on an **annual basis** for paid family **and/or** medical leave under PFML.
- The benefits offered must be greater than or equal to the benefits provided by PFML
 - Must meet all **minimum requirements** (including benefit level and length of leave)
 - Must not cost employees any more than they would be required to contribute to the Department
- The plan must be approved by the Department

Private Plan

- Can be fully insured or self-insured
 - If insured, policy must be issued by a Massachusetts licensed insurance company
 - Unaware of any fully insured plans approved by state, but carriers are working on them
 - Therefore, at this point, only option is a self-insured plan
 - Self-insured plans require a bond

Bonds for Self-Insured Plans

- Bond form available at the [Department](#)
- Bond amount based on the following values, which are multiplied by the 52 weeks in the bond period:
 - 1) 2018 average workforce count
 - 2) 2018-2019 statewide average weekly wage (i.e., \$1,383.41)
 - 3) 2019 PFML contribution rate:
 - 0.13% for family leave only
 - 0.62% for medical leave only
 - 0.75% for both family and medical leave
- For family leave plans: 2018 Average Workforce Count x \$1,383.41 x 0.0013 x 52
- For medical leave plans: 2018 Average Workforce Count x \$1,383.41 x 0.0062 x 52
- For family and medical leave plans: 2018 Average Workforce Count x \$1,383.41 x 0.0075 x 52

Covering Former Employees

- Definition of “covered individual” includes former employee who has been separated for less than 26 weeks
- One of the questions on the application for an exemption is: “does your plan cover unemployed former employees who apply for benefits for family or medical leave for up to 26 weeks after separation from employment, or until they obtain other employment, whichever is sooner?”
 - We understand that plans have been rejected if they do not provide coverage for former employees for 26 weeks after separation

Applying for an Exemption

- Submit an annual approved plan application to the Department
 - The electronic approved plan application through MassTaxConnect beginning April 29.
 - Deadline for first quarter is **December 20**
- The Department will approve or deny exemption within 1-2 days
 - If approved, employers will upload a copy of the plan on which the exemption is based.
 - If denied, employers will be notified why it was denied. Employers may request a follow-up review if they disagree with the basis for denial.

Is A Private Plan Right For You?

- Do you currently offer short or long term disability?
 - If so, determine the following:
 - What is the employer cost per year (current cost is likely less than the future cost of an insured, compliant plan but is a good starting point)
 - What is the max benefit for employees
 - What does the employee pay
 - What is the timing of claim approval and benefit payment
 - Compare to same factors under PFML

Is A Private Plan Right For You?

- Determine cost of bond
- Determine cost of self-insured plan
- CAVEAT
 - Final regulations provide: “An employer . . . who fails to maintain or renew a private plan exemption approved prior to January 1, 2021 may be responsible for retroactive contributions to the Trust Fund.”
 - If you do not renew the private plan, must notify covered individuals and the Department no later than 30 calendar days prior to effective date of termination

Timeline

January 31, 2020

- Remit PFML contributions for Oct-Dec to MassTaxConnect

Quarterly Filing and Contribution Payment

- File an employment and wage detail report, on or before quarterly filing deadline established by the Department of Revenue
- For each employee, include:
 - Name
 - SS# or individual taxpayer ID
 - Wages paid or other earnings
- For each employer:
 - Based on FEIN

Payments to MassTaxConnect

- Based on the quarterly employment and wage detail report, the Department will calculate the total quarterly contribution amount owed
- Employers submit all contributions for all covered individuals in their workforce through MassTaxConnect on or before the quarterly filing deadlines established by the Department of Revenue
 - First deadline = January 31, 2020

NEW HAMPSHIRE PAID FAMILY AND MEDICAL LEAVE

VETOED

- Gov. Chris Sununu vetoed the bill that would have required:
 - Private paid family and medical leave insurance plan or withdraw 0.5% of an employee's wages to pay for a plan created by NH
 - Up to 12 weeks of time off at 60% wages for the birth or adoption of a child, a serious health condition of a family member, or the care of a member in the armed forces during foreign service with a serious injury or illness
- Takeaway
 - Continue monitoring for further developments in this area



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